

ORIGINAL



COMMISSIONERS
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GARY PIERCE



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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DATE: FEBRUARY 23, 2007

FEB 23 2007

DOCKET NO: W-03948A-06-0490

DOCKETED BY	nr
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

EMPIRITA WATER COMPANY, LLC
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 5, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 13, 2007 and MARCH 14, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 EMPIRITA WATER COMPANY, LLC FOR AN
10 EXTENSION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY.

DOCKET NO. W-03948A-06-0490

DECISION NO. _____

12 OPINION AND ORDER

13 DATE OF HEARING:

January 11, 2007

14 PLACE OF HEARING:

Tucson, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

16 APPEARANCES:

Mr. Lawrence V. Robertson, Jr., on
behalf of Empirita Water Company;

Ms. Mary McCool, Intervenor, in
persona; and

Ms. Robin R. Mitchell, Staff Attorney,
Legal Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On July 28, 2006, Empirita Water Company, LLC ("Empirita" or "Company") filed
23 an Application with the Commission for an Extension of its Certificate of Convenience and Necessity
24 ("CCN" or "Certificate").

25 2. On August 25, 2006, the Commission's Utilities Division Staff ("Staff") notified the
26 Company that its application was not sufficient pursuant to the Arizona Administrative Code.

27 3. Empirita provided additional documentation on October 2, 2006, October 5, 2006 and
28

1 October 25, 2006.

2 4. On October 31, 2006, Staff notified the Company that its application was sufficient.

3 5. By Procedural Order dated November 7, 2006, the matter was set for hearing at the
4 Commission's offices in Tucson, Arizona.

5 6. On December 8, 2006, Empirita had notice of the hearing published in the *Sierra Vista*
6 *Herald* and *Bisbee Daily Review*, newspapers of general circulation in Empirita's service area, and
7 mailed or faxed the notice of the hearing to the property owners in the proposed extension area.

8 7. On December 22, 2006, Staff filed its Staff Report, recommending an Order
9 Preliminary.

10 8. On January 4, 2007, Mary McCool, a property owner living near the proposed
11 extension area filed a request to intervene. The application to intervene was granted at the
12 commencement of the hearing.

13 9. The hearing convened as scheduled, before a duly authorized Administrative Law
14 Judge, on January 11, 2007, at the Commission's offices in Tucson, Arizona.

15 10. Empirita provides water utility service to approximately 11 connections in an area
16 approximately 8 miles west of Benson in Cochise County, Arizona. An additional 9 to 10 lots are
17 under construction or contain model homes. Empirita's current CC&N area serves a residential
18 development known as Redhawk I.

19 11. Empirita received a CC&N encompassing 1,880 acres in Decision No. 63676 (May
20 24, 2001). By Procedural Order dated September 11, 2002, the Commission reduced the size of the
21 CC&N from 1,880 acres to 320 acres due to the Company's failure to provide information related to
22 the adequacy of water supply required by Decision No. 63676 within the time specified.

23 12. In the current application, Empirita seeks to add an addition 1,651 acres to its
24 certificated area. The proposed extension area is adjacent to the Company's existing CC&N area. A
25 copy of the legal description for the proposed extension area is attached hereto as Exhibit A, and
26 incorporated herein by reference.

27 13. Empirita has received requests for service from the developers of the following areas:
28 Redhawk II for 679 acres (211 lots); Redhawk III for 320 acres (98 lots); Easter Mountain Ranch for

1 556 acres (500 lots); Easter Mountain Ranch for 16 acres (48 lots); and Jay Six Ranch for 80 acres
2 (24 lots).

3 14. Empirita's current water system consists of two active wells (Well No. 1 producing 38
4 gallons per minute ("GPM") and Well No. 2 producing 31 GPM) and 47,000 gallons of storage
5 capacity. The Company has drilled two additional wells that are not yet connected to the distribution
6 system. Well No. 3 has a capacity of 100 GPM and Well No. 4 has a capacity of 250 GPM.

7 15. Thunder Ranch Estates is the developer of the Redhawk I; related entities Thunder
8 Ranch Estates Unit II, Unit III and Unit IV will develop Redhawk II and III. The Thunder Ranch
9 Estates LLCs are separate partnerships with different investors, but they share overlapping ownership
10 with the water company. The developer of Redhawk I states that all 91 lots in this development have
11 been sold. The homes in the Redhawk I development have estimated values of between \$300,000 and
12 close to \$1 million. (TR at 30). The Redhawk developer has sold lots to individuals and some
13 builders, some of the latter having constructed spec homes, but to date has not tried to sell lots in bulk
14 to home builders. He expects the Redhawk II and III developments to follow the same pattern of
15 development. The Redhawk developer has placed deed restrictions on Redhawk I, II, and III that
16 preclude drilling individual wells. The developer expects marketing lots in Redhawk II to start soon
17 after the Commission approves the current application. The developer of the Easter Mountain Ranch
18 properties is not connected with either Thunder Ranch Estates or Empirita. The Easter Mountain
19 Ranch developer also expects to prohibit private wells in the CCRs for his property. (TR at 62).

20 16. Empirita anticipates 881 connections within the proposed extension area, and total
21 connections of 972 at build-out of all areas.

22 17. Staff estimates that based on existing well production and storage capacities, the
23 existing system can serve approximately 257 service connections.

24 18. Empirita plans to add Well Nos. 3 and 4, with a combined production capacity of 350
25 GPM, two booster stations and two storage reservoirs with combined storage capacity of 365,000
26 gallons, a 6 inch reservoir fill line and an 8 inch water main to serve the extension area.

27 19. The Company expects to finance the expansion of its distribution system in the
28 proposed extension areas by means of Main Extension Agreements. The Company anticipates that

1 extensions of service within the Jay Six Ranch will be based on Main Extension Agreements with
2 individual lot owners.

3 20. Staff concludes that the existing water system has adequate production and storage
4 capacity to serve the existing CC&N area and the Company can reasonably be expected to develop
5 additional production, storage and infrastructure as required within a conventional five year period.

6 21. Empirita has not yet obtained the Arizona Department of Environmental Quality's
7 ("ADEQ") Certificate of Approval to Construct ("ATC") and the Certificate of Approval of
8 Construction ("AOC") for water plant additions to its water system that will be needed to serve the
9 requested extension area. Staff recommends that Empirita be required to file with Docket Control, as
10 a compliance item in this docket, copies of the AOC issued by ADEQ for the water plant additions
11 needed to serve the Redhawk II development within one year of the effective date of the Order
12 granting the CC&N.

13 22. Staff also recommends that Empirita be required to file with Docket Control, as a
14 compliance item in this docket, copies of the ADEQ ATC for the water plant additions needed to
15 serve the Redhawk II development within two years of the effective date of the Order granting the
16 Order Preliminary.

17 23. Empirita states there are no plans for golf courses, water features, or artificial lakes in
18 any of the extension areas and that the lots will have individual septic tank systems.

19 24. Because Empirita does not yet serve the threshold number of connections or
20 population, ADEQ does not yet have this system in its databank, and thus cannot determine if the
21 system is currently delivering water that meets water quality standards required by the Arizona
22 Administrative Code. Title 18, Chapter 4. On March 31, 2006, ADEQ issued a Notice of
23 Opportunity to Correct for Empirita's failure to obtain an Approval of Construction prior to serving
24 customers. Empirita testified at the hearing that it expects to have the AOC by mid-February 2007.

25 25. Staff recommends that Empirita file with Docket Control, as a compliance item in this
26 matter, documentation issued by ADEQ showing that the Empirita water system is in full compliance
27 with ADEQ requirements and delivering safe water that meets water quality standards required by
28 Arizona Administrative Code, Title 18, Chapter 4. Staff states that this documentation shall be filed

1 when received by the Company, but no later than 15 days after receipt.

2 26. Empirita is not located in an Active Management Area ("AMA") and subsequently is
3 not subject to reporting and conservation rules.

4 27. Empirita has not yet received a Physical Availability Determination ("PAD") for the
5 proposed extension area from the Arizona Department of Water Resources ("ADWR"). Thus, Staff
6 recommends that Empirita be ordered to file with Docket Control, as a compliance item, a copy of
7 ADWR's PAD, stating that there is adequate water, no later than 2 years after the decision granting
8 the Order Preliminary.

9 28. Empirita has a Designation of Adequate Water Supply from ADWR for 117.6 annual
10 acre feet, which is more than sufficient to serve its current service area. The Company has applied to
11 ADWR for a Modification of its Designation for 321 annual acre feet, which would be sufficient to
12 serve the proposed extension area. If Empirita receives a Designation of Adequate Water Supply for
13 321 acre feet, the developers within its certificated boundaries will not need to obtain a Physical
14 Availability Determination. Empirita presented evidence that ADWR is poised to act on its
15 application for Modification of its Designation of Adequate Water Supply for 321 acre feet after the
16 Company can present evidence (1) that Commission has granted the application to extend its CC&N;
17 and (2) it provides evidence from ADEQ that it is in compliance with ADEQ regulations.¹ Obtaining
18 a Designation of Adequate Water Supply would indicate that water is physically, continuously, and
19 legally available in the service area.

20 29. Ms. McCool, the Intervenor in this matter, was concerned that the additional
21 groundwater pumping that would occur to serve the development in the extension area would
22 adversely affect existing private wells that are located near the development, but outside the proposed
23 CC&N boundaries. Ms. McCool introduced a hydrology review from an ADWR hydrologist dated
24 August 29, 2006 (Ex I-1) which contains the statement "Impacts to the domestic wells (upwards of 75
25 wells) found in the vicinity (about one mile) of the wellfield for the Empirita Water Company will
26 likely experience large impacts due to declines in the groundwater table. Many domestic wells will
27

28 ¹ ADWR has clarified that it needs evidence that the Company has cured its failure to obtain the AOC for the facilities used to serve the Redhawk I customers.

1 probably need to be deepened or will go dry.” Ms. McCool requested that the Commission consider
2 the following conditions which she believed would mitigate the effect of the expected increased
3 groundwater pumping:

4 (a) A mechanism to require that all developers include deed restrictions which would
5 prevent individual wells from being drilled and that each developer implement significant CC&Rs
6 that would limit water features and swimming pools and would promote water conservation;

7 (b) Require Empirita to offer monitoring services to wells in the impact area; and

8 (c) Have Empirita extend its CC&N to include the impact area. (TR 169)

9 30. Empirita presented the testimony of its hydrologist which indicates that using ADWR
10 methodologies, the expected groundwater pumping would not have an impact on nearby domestic
11 wells. (Ex 19, TR 105-125) Empirita explained that according to ADWR rules, if proposed
12 groundwater pumping would cause 25 feet or more of drawdown at existing wells, it is considered an
13 unacceptable impact, and the proposed new well permit would not be allowed. Further, the Company
14 states, ADWR rules state that 10 to 25 feet of additional drawdown may or may not be an impact, and
15 that based on specific criteria, the ADWR director will decide whether a drawdown of 10 to 25 feet is
16 an impact. Empirita states that ADWR rules provide that a drawdown of 10 feet or less is not an
17 impact on the existing well. Empirita’s well impact study indicates less than 10 feet of drawdown.

18 31. Neither Ms. McCool, nor any Staff witnesses had the expertise to evaluate Empirita’s
19 well impact study.

20 32. Ultimately, ADWR will determine if Empirita’s well field complies with ADWR
21 rules. The Commission does not have a hydrologist on Staff and does not have the expertise to
22 analyze hydrologic studies to make a determination of impact on neighboring wells. We rely on
23 ADWR to make such determinations, and will accept ADWR’s determination on the application for
24 the Modification to the Designation of Adequate Water Supply as evidence whether the proposed
25 development complies with state groundwater law. The Commission does not have the authority to
26 mandate that private property owners implement deed restrictions, but does have authority over the
27 water public service corporation and can order the water company to implement water conservation
28 measures that are in the public interest. In this case, the Commission has approved an inverted rate

1 design to promote conservation. The Intervenor's proposed measures to impose deed restrictions to
2 encourage water conservation appear better directed at the county planning process. Furthermore, the
3 suggestion that Empirita be required to monitor the neighboring wells is not sufficiently bounded to
4 allow us to find such measures would be in the public interest. The potential costs could be
5 significant with little benefit to the Empirita ratepayers. The Commission would have no authority to
6 require conservation measures on private domestic wells. Finally, the Commission can consider any
7 future request for service from neighboring areas if and when such requests are made.

8 33. Although it appears that no golf course is planned for the requested extension areas,
9 given the recent drought conditions in the state, we believe it is reasonable to include a prohibition on
10 Empirita from providing ground water for the irrigation of golf courses, artificial lakes or other water
11 features with the extension areas.

12 34. Empirita is in good standing with the Commission's Corporations Division.

13 35. Empirita is current with its property taxes.

14 36. According to the Utilities Division Compliance Section, Empirita has no outstanding
15 Commission compliance issues.

16 37. The U. S. Environmental Protection Agency ("EPA") has reduced the arsenic
17 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10
18 µg/l. Empirita reports that arsenic was not detected at Wells No. 1, 2 and 4, and that arsenic was 5
19 µg/l at new Well No. 3. Based on these arsenic concentrations, the Company is in compliance with
20 the new arsenic MCL.

21 38. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to
22 manage its resources during periods of shortages due to pump breakdowns, droughts, or other
23 unforeseeable events.

24 39. Empirita does not have a CPT. Therefore, Staff recommends that the Company file a
25 curtailment tariff within 45 days of the effective date of the Commission's Decision granting the
26 Order Preliminary. Staff states that the tariff should be docketed as a compliance item under this
27 docket number for the review and certification of Staff. Staff further recommends that the tariff
28 should generally conform to the sample tariff found on the Commission's website at

1 www.cc.state.az.us/utility/forms/Curtailment-std.pdf. Staff states that it recognizes that the Company
2 may need to make minor modifications to the sample tariff according to its specific management,
3 operational, and design requirements as necessary and appropriate.

4 40. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
5 Commission evidence showing that the applicant has received the required consent, franchise or
6 permit from the proper authority. If the applicant operates in an unincorporated area, the company
7 has to obtain a franchise from the county. Empirita has filed a copy of its Franchise from Cochise
8 County that grants a nonexclusive license to use the public rights of way. The Jay Six Ranch portion
9 of the proposed extension area is within Pima County. Consequently, Staff recommends that
10 Empirita file as a compliance item in this docket, copies of the franchise from Pima County for any
11 portion of the proposed extension area lying within Pima County within 2 years of the Order
12 Preliminary.

13 41. Empirita has proposed to provide water utility service to the requested extension area
14 under its authorized rates and charges. Staff concurs.

15 42. Staff recommends the Commission issue an Order Preliminary to Empirita for an
16 extension to its CC&N to provide water service subject to compliance with the following conditions:

17 (a) To require Empirita to charge its authorized rates and charges in the extension
18 area.

19 (b) To require Empirita to file with Docket Control, as a compliance item in this
20 matter, documentation issued by the ADEQ showing that the Empirita water system is in full
21 compliance with ADEQ requirements and delivering safe water that meets water quality standards
22 required by Arizona Administrative Code, Title 18, Chapter 4. Staff recommends this documentation
23 be filed when received by the Company, but no later than 15 days after receipt.

24 (c) To require Empirita to file with Docket Control, as a compliance item in this
25 docket, copies of the AOC issued by ADEQ for the water plant additions needed to serve the
26 Redhawk II development within one year of the effective date of the Order granting the CC&N.

27 (d) To require Empirita to file with Docket Control, as a compliance item in this
28 docket, copies of the ATC issued by ADEQ for the water plant additions needed to serve the

1 Redhawk II development within two years of the effective date of the Order granting the Order
2 Preliminary.

3 (e) To require Empirita to file with Docket Control, as a compliance item in this
4 docket, a copy of ADWR's Physical Availability Determination, stating that there is adequate water,
5 no later than 2 years of the Decision granting the Order Preliminary.²

6 (f) To require Empirita to file a curtailment tariff within 45 days of the effective date
7 of the Commission's Decision granting the Order Preliminary, such tariff to be docketed as a
8 compliance item under this docket number for the review and certification of Staff. Staff further
9 recommends that the tariff should generally conform to the sample tariff found on the Commission's
10 website at www.cc.state.az.us/utility/forms/Curtailment-std.pdf, but that the Company may need to
11 make minor modifications to the sample tariff according to its specific management, operational, and
12 design requirements as necessary and appropriate.

13 (g) To require Empirita to file with Docket Control, as a compliance item in this
14 docket, a copy of the franchise agreement from Pima County for that portion of the extension area in
15 Pima County, within two years of the Decision granting the Order Preliminary.

16 43. Staff further recommends that after Empirita complies with Staff recommendations set
17 forth in Findings of Fact No. 42, (b), (d), (e), (f) and (g), the Company shall file a statement that it has
18 complied with these requirements. Within 60 days of the Company's filing, Staff states it would file
19 a response. Staff recommends that the Commission schedule this item for a vote to grant the CC&N
20 as soon as possible after Staff's filing that confirms Empirita's compliance with Findings of Fact No.
21 43.

22 44. Staff's recommendations as set forth above, are reasonable, and should be adopted,
23 except that the Company may substitute a Designation of Adequate Water Supply that would allow it
24 to serve the extension area, for a PAD, since the Designation, as discussed herein, would indicate that
25 water is physically, continuously and legally available to serve the extension area.

26 45. Because an allowance for the property tax expense of Empirita is included in the

27 _____
28 ² Staff appears to agree that a Modification of the Designation of Adequate Water Supply would be acceptable in lieu of a
PAD. (TR at 192)

1 Company's rates and will be collected from its customers, the Commission seeks assurances from the
2 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
3 authority. It has come to the Commission's attention that a number of water companies have been
4 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
5 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, Empirita
6 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
7 the company is current in paying its property taxes in Arizona.

8 CONCLUSIONS OF LAW

9 1. Empirita is a public service corporation within the meaning of Article XV of the
10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over Empirita and the subject matter of the
12 application.

13 3. Notice of the application was provided in accordance with law.

14 4. There is a public need and necessity for water service in the proposed extension area,
15 and this requires issuance of an Order Preliminary prior to the approval of an extension of Empirita's
16 CC&N authorizing it to construct, operate and maintain facilities to provide water service in the area
17 described in Exhibit A.

18 5. Empirita is a fit and proper entity to receive an Order Preliminary for the proposed
19 extension area.

20 6. The application by Empirita to extend its CC&N should be granted subject to an Order
21 Preliminary being issued prior to a Certificate subject to the conditions set forth in Findings of Fact
22 Nos. 42 and 44.

23 ORDER

24 IT IS THEREFORE ORDERED that pursuant to A.R.S. §§ 40-282, this Order Preliminary to
25 the issuance of the Certificate of Convenience and Necessity is granted and upon completion of the
26 requirements contained in Findings of Fact Nos. 42 and 44, Empirita Water Company, LLC, shall file
27 a Motion in this docket for the issuance of a Certificate of Convenience and Necessity authorizing it
28 to construct, maintain and operate facilities to provide water utility serve to the public in the area

1 more fully described in Exhibit A.

2 IT IS FURTHER ORDERED that upon the Motion of Empirita Water Company, LLC, and
3 verification of satisfaction of the requirements for the issuance of Empirita Water Company's
4 Certificate of Convenience and Necessity, Staff shall prepare and docket an Order that grants the
5 Certificate of Convenience and Necessity for Commission approval.

6 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file with Docket
7 Control, as a compliance item in this docket, documentation issued by the ADEQ showing that the
8 Empirita Water Company, LLC water system is in full compliance with ADEQ requirements and
9 delivering safe water that meets water quality standards required by Arizona Administrative Code,
10 Title 18, Chapter 4, within 15 days of receipt.

11 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file with Docket
12 Control, as a compliance item in this docket, copies of the ATC issued by ADEQ for the water plant
13 additions needed to serve the Redhawk II development within two years of the effective date of this
14 Decision.

15 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file with Docket
16 Control, as a compliance item in this docket, copies of ADWR's Order granting a Designation of
17 Adequate Water Supply, or such other evidence from ADWR that states that there is adequate water
18 to serve the extension area, no later than 2 years after this Decision.

19 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file a curtailment
20 tariff, that generally conforms to the sample tariff found on the Commission's website at
21 www.cc.state.az.us/utility/forms/Curtailment-std.pdf, within 45 days of the effective date of this
22 Decision, such tariff to be docketed as a compliance item under this docket number for the review
23 and certification of Staff.

24 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file with Docket
25 Control, as a compliance item in this docket, a copy of the franchise agreement from Pima County for
26 that portion of the extension area in Pima County, within two years of this Decision.

27 IT IS FURTHER ORDERED that in the event Empirita Water Company, LLC does not
28 timely comply with the above ordering paragraphs, the Order Preliminary approved herein shall be

1 deemed null and void. In such event, Staff shall file a memorandum to close this docket.

2 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall file with Docket
3 Control, as a compliance item in this docket, copies of the AOC issued by ADEQ for the water plant
4 additions needed to serve the Redhawk II development within one year of the effective date of the
5 order granting the CC&N.

6 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall charge its existing
7 authorized rates and charges in the extension area.

8 IT IS FURTHER ORDERED that Empirita Water Company, LLC shall annually file as part
9 of its annual report, an affidavit with the Utilities Division attesting that the Company is current in
10 paying its property taxes in Arizona.

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IT IS FURTHER ORDERED that in light of the on-going drought conditions in Arizona and the need to conserve groundwater, Empirita Water Company, LLC is prohibited from selling groundwater for the purpose of irrigating any golf course, or any ornamental lakes or water features located in the common areas of the certificated expansion area.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 6SERVICE LIST FOR:

EMPIRITA WATER COMPANY, LLC

2 DOCKET NO.:

W-03948A-06-0490

3 Lawrence V. Robertson, Jr.
4 P.O. Box 1448
5 Tubac, Arizona 85646
6 Attorney for Empirita Water Company

7 Jim Vermilyea, Manager
8 Empirita Water Company, LLC
9 2090 North Kolb Road, Suite 120
10 Tucson, Arizona 85715

11 Mr. Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Mr. Ernest Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007
21
22
23
24
25
26
27
28

EXHIBIT A

EMPIRITA WATER COMPANY
DOCKET NO. W-03948A-06-0490
AMENDED LEGAL DESCRIPTION

Thunder Ranch EstatesUNIT I

The North ½ of Section 19, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona (CURRENT CC&N)

UNIT II

The South ¼ of Section 19, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona

UNIT III

The North ½ of Section 30, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona

SIMONSON PROPERTY - 80 ACRES

The East ½ of the Northeast ¼ of Section 24, Township 17 South, Range 18 East, of the Gila and Salt River Base and Meridian, Pima County, Arizona

Redhawk II

A portion of Sections 20 and 29, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of Section 20;

THENCE North 89° 29' 59" East, along the North line of said Section 20, a distance of 1,074.53 feet;

THENCE South 23° 44' 53" East, a distance of 480.75 feet;

THENCE South 19° 10' 38" East, a distance of 167.07 feet to the POINT OF BEGINNING;

THENCE South 19° 10' 38" East, a distance of 126.25 feet;

THENCE South 16° 57' 38" West, a distance of 426.47 feet;

THENCE South 23° 34' 28" West, a distance of 382.36 feet;

THENCE South 18° 23' 40" East, a distance of 515.59 feet;

THENCE South 67° 48' 56" East, a distance of 521.72 feet;

THENCE South 33° 43' 25" East, a distance of 525.27 feet;

THENCE South 30° 43' 02" East, a distance of 545.56 feet;

THENCE South 30° 53' 48" East, a distance of 770.32 feet;

THENCE South 30° 55' 53" East, a distance of 433.65 feet;

THENCE South 40° 40' 51" East, a distance of 634.90 feet;

THENCE South 30° 03' 35" East, a distance of 479.36 feet;

THENCE South 17° 44' 20" East, a distance of 294.40 feet;

EMPIRITA WATER COMPANY
DOCKET NO. W-03948A-06-0490

THENCE North 88° 59' 44" East, a distance of 319.91 feet to a point on the South line of said Section 20, said point being ACP, RLS 7599;
THENCE South 00° 00' 20" East, a distance of 1,324.43 feet to a point in the North half of said Section 29, said point being ACP, RLS 7599;
THENCE South 89° 03' 17" West, a distance of 651.02 feet to a point;
THENCE South 89° 04' 10" West, a distance of 668.53 feet to a point;
THENCE South 88° 54' 45" West, a distance of 2,650.46 feet to a point on the West line of the Northwest Quarter of said Section 29;
THENCE North 00° 20' 53" East, along said West line of Section 29, a distance of 1,326.91 feet to the Northwest corner of Section 29;
THENCE North 00° 30' 47" East, a distance of 2,656.94 feet to a found stone with a mound of rocks marking the West Quarter corner of said Section 20;
THENCE North 01° 01' 27" West, a distance of 2,075.34 feet;
THENCE North 89° 29' 49" East, a distance of 1,312.30 feet to the POINT OF BEGINNING.

Containing 359.50 acres ±

Except all oil, gas and minerals as reserved in Book 105 of Deeds, Page 492, records of Cochise County, Arizona.

Easter Mountain Ranch
(555 Acres ±)

PARCEL I

The Southeast Quarter of the Northwest Quarter, and
The East Half of the Southwest Quarter, and
The Southwest Quarter of the Southwest Quarter,
All being found in Section 29, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America.

PARCEL II

The South Half of the South Half of Section 30, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America.

PARCEL III

The North Half of the Southeast Quarter, and
The East Half of the Northeast Quarter, and
The East Half of the Northwest Quarter of the Northeast Quarter,
All being found in Section 31, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America.

EMPIRITA WATER COMPANY
DOCKET NO. W-03948A-06-0490

PARCEL IV

The West Half of the Northwest Quarter of the Northwest Quarter, and
The Southwest Quarter of the Northwest Quarter of Section 32, Township 17 South, Range 19 East,
of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America.

Easter Mountain Ranch, L.L.C.

(Legal Description for Approximate 16 Acre Parcel)

A portion of Section 20, Township 17 South, Range 19 East, of the Gila and Salt River Base and
Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of Section 20;

THENCE North $89^{\circ} 29' 59''$ East, a distance of 1,074.53 feet, along the North line of said
Section 20;

THENCE South $23^{\circ} 44' 53''$ East, a distance of 480.75 feet;

THENCE South $19^{\circ} 10' 38''$ East, a distance of 167.07 feet;

THENCE South $89^{\circ} 29' 49''$ West, a distance of 1,312.30 feet;

THENCE North $01^{\circ} 01' 27''$ West, a distance of 600.00 feet to the POINT OF BEGINNING.

EXCEPT all oil, gas and minerals as reserved in Book 105 of Deeds of Real Estate at Page 492,
records of Cochise County, Arizona.